SUPREME COURT, U. S.

No. 71-114

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E. ROBERT SEAVER, CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1971

CHARLES E. BOWDEN, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

ERWIN N. GRISWOLD,
Solicitor General,
Department of Justice,
Washington, D. C. 20530.

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MEMORANDUM FOR THE UNITED STATES

On January 8, 1971, petitioner was served with a grand jury subpoena *ad testificandum* issued by the United States District Court for the Western District of Washington, directing him to appear on January 12, 1971, before a federal grand jury sitting in Seattle, Washington. A motion to quash the subpoena was denied; petitioner then appeared before the grand jury but refused to answer a number of questions, asserting his privilege against self-incrimination under the Fifth Amendment.

Thereafter, on April 27, 1971, the district court entered an order (Pet. App. C), pursuant to Section 201(a) of the Organized Crime Control Act of 1970, 84 Stat. 927, 18 U.S.C. 6002, granting petitioner immunity and directing him to testify before the grand jury. Petitioner again refused to testify on Fifth Amendment grounds. Later that same day, petitioner appeared before the district court, was ordered once more to testify and refused, and was then adjudged in civil contempt. Execution of the court's judgment was stayed, upon appeal to the court of appeals, until sixty days after the return of the court of appeals' mandate.

On June 24, 1971, the court of appeals affirmed *per curiam* (Pet. App. A), relying on its previous decisions in *Charleston* v. *United States*, C.A. 9, No. 71-1787, decided June 16, 1971, and *Stewart* v. *United States*, 440 F. 2d 954, which upheld the constitutional validity of Section 201(a). The court of appeals' mandate was stayed pending the filing of a petition for a writ of certiorari, and this Court's disposition of that petition.[1]

The issue whether use immunity, as afforded by Section 201(a), is sufficient to meet the requirements

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[1] On August 6, 1971, the government moved in the district court for an order vacating the judgment of contempt, stating that no useful purpose would now be accomplished by petitioner's further appearance before the grand jury. Petitioner refused to consent to the district court's vacating of its contempt judgment, however, and the government's motion was denied. Since the contempt judgment is still outstanding, the fact that the government no longer intends to call petitioner may not be sufficient to moot the case.

of the Fifth Amendment's privilege against self-incrimination is presently pending before this Court in *Kastigar* v. *United States*, No. 70-117, certiorari granted, May 17, 1971. Although the instant case arises in the context of a grand jury investigation into alleged violations of antitrust laws, the question presented is essentially the same as the question in *Kastigar;* the Court's decision in that case will thus control here.

It is therefore respectfully submitted that disposition of the present petition should be postponed until this Court has decided *Kastigar*, if, under the circumstances, the case is not felt to be moot.

ERWIN N. GRISWOLD,
Solicitor General.

AUGUST 1971.

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